

Chapter 5 Unfair Practices Act

13-5-1 Short title.

This act shall be known and may be cited as the "Unfair Practices Act."

No Change Since 1953

13-5-2 "Person" defined.

When used in this act, unless the context otherwise requires, the term "person" means an individual, a corporation, a partnership, an association, a joint stock company, a business trust or any unincorporated organization.

No Change Since 1953

13-5-2.5 Procedure to prevent unfair competition.

Unless otherwise provided in this chapter:

- (1) Unfair methods of competition in commerce or trade are unlawful and shall be enjoined as provided by this section.
- (2) The division may prevent persons, except banks, common carriers, and other public utilities subject to regulation, from using unfair methods of competition in commerce or trade.
- (3) If the division has reason to believe that any person has been or is using unfair methods of competition in commerce or trade, and it appears to the division that it would be in the interest of the public to stop the unfair methods of competition, the division may begin adjudicative proceedings and may issue an order directing the person to cease and desist from using those methods of competition.
- (4) The division may file suit to enjoin and restrain a person from conducting the unfair competition if:
 - (a) after the adjudicative proceedings, the executive director believes that the method of competition in question is prohibited by this section; or
 - (b) no hearing is requested; and
 - (i) the person accused of unfair competition does not cease the unfair competition; or
 - (ii) the person accused of unfair competition begins the unfair competition again after discontinuing it.
- (5) The attorney general, or the county attorneys in their respective counties, shall conduct unfair competition proceedings upon request by the division.
- (6) No order of the division or judgment of the court to enforce the order may waive the liability of any person under the antitrust laws or other laws of this state.
- (7)
 - (a) Complaints, orders, notices, and the processes of the division may be served by anyone authorized by the division by:
 - (i) delivering a copy to the person to be served, to a member of the partnership to be served, or to the president, secretary, other executive officer, or a director of the corporation to be served;
 - (ii) leaving a copy at the principal office or place of business of the person; or
 - (iii) sending by registered mail a copy addressed to the person at his principal place of business or office.

- (b) The verified return by the person serving the complaint, order, notice, or other process setting forth the manner of service or the return post-office receipt for the complaint, order, notice, or other process sent by registered mail is proof of service.

Amended by Chapter 161, 1987 General Session

13-5-3 Unlawful discriminations -- Burden of proof -- Taking or offering commissions -- Payments for benefit of customers -- Discrimination among purchasers -- Inducing discriminations.

- (1)
 - (a) It is unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchasers involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the state and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them.
 - (b) Nothing in this chapter prevents:
 - (i) differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the different methods or quantities in which such commodities are to such purchasers sold or delivered;
 - (ii) persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade; and
 - (iii) price changes from time to time in response to changing conditions affecting the market for or the marketability of the goods concerned, including actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.
- (2) Upon proof being made, at any suit on a complaint under this section, that there has been discrimination in price or services or facilities furnished or in payment for services or facilities to be rendered, the burden of rebutting the prima-facie case thus made by showing justification shall be upon the person charged with a violation of this section. However nothing in this chapter shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.
- (3) It is unlawful for any person engaged in commerce in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for and not exceeding the actual cost of such services rendered in connection with the sale or purchase of goods, wares, or merchandise.
- (4) It is unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products, or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

- (5) It is unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.
- (6) It is unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.

Amended by Chapter 378, 2010 General Session

13-5-4 Return of net earnings or surplus by cooperatives to members.

Nothing in this act shall prevent a cooperative association from returning to its members, producers or consumers the whole, or any part of, the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to or through the association.

No Change Since 1953

13-5-5 "Commerce" defined.

Definition of "commerce" as used in this bill shall be construed to mean intrastate commerce in the state of Utah.

No Change Since 1953

13-5-6 Liability of agents.

Any person who, either as director, officer or agent of any firm or corporation or as agent of any person, violating the provisions of this act, assists or aids directly or indirectly, in such violation shall be responsible therefor equally with the person, firm or corporation for whom or for which he acts.

No Change Since 1953

13-5-8 Advertising goods not prepared to supply.

It shall be unlawful for any person engaged in business within the state to advertise goods, wares, or merchandise that person is not prepared to supply.

Amended by Chapter 4, 1993 General Session

13-5-9 Limitation on quantity of article or product sold or offered for sale to any one customer.

A person may not circumvent the provisions of this chapter relating to the quantity of articles or products any one customer may purchase by requiring presentation of coupons, certificates, special purchase authorizations, or any other procedures designed in any way to limit quantity of purchases as provided herein.

Amended by Chapter 351, 2008 General Session

13-5-10 Cost -- Purchase price at forced sales.

In establishing the cost of a given article, product or commodity to the distributor and vendor, the invoice cost of said article, product or commodity purchased at a forced, bankrupt, closeout sale or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of the date of said sale of said article, product or commodity replaced through the ordinary channels of trade, unless said articles, product or commodity is kept separate from goods purchased in the ordinary channels of trade and unless said article, product or commodity is advertised and sold as merchandise purchased at a forced, bankrupt, closeout sale, or by means other than through the ordinary channels of trade, and said advertising shall state the conditions under which said goods were so purchased, and the quantity of such merchandise to be sold or offered for sale.

No Change Since 1953

13-5-11 Proceedings -- Local cost surveys as evidence.

In any injunction proceedings or in the prosecution of any person as officer, director or agent, it shall be sufficient to allege and prove the unlawful intent of the person, firm or corporation for whom or for which he acts. Where a particular trade or industry of which the person, firm or corporation complained against is a member, has an established cost survey for the locality and vicinity in which the offense is committed, the said cost survey shall be deemed prima-facie evidence in proving the costs of the person, firm or corporation complained against within the provisions of this act, unless the person, firm or corporation shall have kept a continuous, accurate and comprehensive record of the cost of business of the person, firm or corporation, in which event said record may be introduced to rebut the cost survey.

No Change Since 1953

13-5-12 Sales exempt from chapter.

- (1) The provisions of this chapter do not apply to any sale made:
 - (a) in closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing his trade in any such stock or commodity, and in the case of the sale of seasonal goods, or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation; provided, prior notice is given to the public thereof;
 - (b) when the goods are damaged or deteriorated in quality, and prior notice is given to the public thereof;
 - (c) by an officer acting under the orders of any court;
 - (d) in an endeavor made in good faith to meet the legal prices of a competitor as herein defined selling the same article, product or commodity in the same locality or trade area;
 - (e) by manufacturers, producers, brokers or wholesale distributors meeting in good faith prices established by interstate competition regardless of cost; provided, such prices are available to all persons buying on like terms and conditions in the same locality and vicinity.
- (2) Any person, who performs work upon, renovates, alters or improves any personal property belonging to another person, except necessary repairs due to damage in transit, shall be construed to be a vendor within the meaning of this chapter.

Amended by Chapter 378, 2010 General Session

13-5-13 Contracts in violation declared illegal.

Any contract expressed or implied, made by any person, in violation of any of the provisions of this act is declared to be an illegal contract and no recovery thereon shall be had.

No Change Since 1953

13-5-14 Injunctive relief -- Damages -- Immunity.

Any person or the state of Utah may maintain an action to enjoin a continuance of any act in violation of this chapter, and, if injured by the act, for the recovery of damages. If, in such action, the court finds that the defendant is violating or has violated any of the provisions of this chapter, it shall enjoin the defendant from a continuance of the violation. It is not necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff is entitled to recover from the defendant three times the amount of the actual damages sustained or \$2,000, whichever is greater, plus court costs.

Any defendant in an action brought under this section may be required to testify. The books and records of such defendant may be brought into court and introduced, by reference, into evidence. No information so obtained may be used against the defendant as a basis for a misdemeanor prosecution under this chapter.

Amended by Chapter 58, 1983 General Session

13-5-15 Penalty for violation of chapter.

Any person, whether as principal, agent, officer or director, for himself or for another person, who knowingly violates this chapter, is guilty of a misdemeanor for each violation. Upon conviction he shall be punished by a fine not to exceed \$5,000, or by imprisonment not to exceed 12 months or by both.

Amended by Chapter 58, 1983 General Session

13-5-16 Separability clause.

If any section, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision does not affect the validity of the remaining portions of the act. The Legislature hereby declares that it would have passed this act, and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more other sections, sentences, clauses or phrases be declared unconstitutional.

Amended by Chapter 378, 2010 General Session

13-5-17 Policy of act.

The Legislature declared that the purpose of this act is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition, by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented. This act shall be liberally construed that its beneficial purposes may be subserved.

No Change Since 1953

13-5-18 Cost -- Separate entities of business.

For the purposes of this act, manufacturing, jobbing, wholesaling and retailing activities of a person shall be considered separate and distinct entities of business in establishing and determining cost of any article, product or commodity.

No Change Since 1953